

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MARCUS MABLE, JR.,

Civil No. 12-1538 (SRN/JJG)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

STATE OF MINNESOTA,

Defendant.

This case is before the undersigned United States Magistrate Judge on Plaintiff's application for leave to proceed in forma pauperis, ("IFP"), pursuant to 28 U.S.C. § 1915(a)(1). (Docket No. 2.) The matter has been referred to this Court for report and recommendation under 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, the Court will recommend that Plaintiff's IFP application be denied, and that this action be summarily dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

An IFP application will be denied, and the action will be dismissed, when a plaintiff seeks a judgment against a party that is immune from being sued. 28 U.S.C. § 1915(e)(2)(B)(iii).

In this case, the only named Defendant is the State of Minnesota. However, the State of Minnesota is immune from suit in federal court under the Eleventh Amendment to the United States Constitution. The Eleventh Amendment prohibits individuals from suing states in federal court, unless the state has consented to being sued, (Pugh v. Alabama, 438 U.S. 781, 782 (1978) (per curiam)), or Congress has abrogated the state's immunity by some express statutory provision. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66-

67 (1989); Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995). Plaintiff's complaint includes no allegations suggesting that the State of Minnesota has consented to be sued in this matter, and Plaintiff has not identified any act of Congress that would abrogate the State's immunity. Moreover, the Court cannot independently conceive of any legal grounds that would allow Plaintiff to avoid the State's immunity. Thus, the Court finds that Plaintiff's current lawsuit against the State of Minnesota is barred by the Eleventh Amendment. It follows that Plaintiff's IFP application must be denied, and this action must be summarily dismissed, pursuant to § 1915(e)(2)(B)(iii).

RECOMMENDATION

Based upon the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's application for leave to proceed in forma pauperis, (Docket No. 2), be **DENIED**; and
2. This action be summarily **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

Dated: June 29, 2012

s/ Jeanne J. Graham
JEANNE J. GRAHAM
United States Magistrate Judge

NOTICE

Pursuant to District of Minnesota Local Rule 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by **July 16, 2012**. A party may respond to the objections within fourteen (14) days after service thereof. Any objections or responses shall not exceed 3,500 words. The District Judge will make a de novo determination of those portions of the Report and Recommendation to which objection is made.